

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

IGOR KOZLOV,

Plaintiff,

vs.

**ASSOCIATED WHOLESALE GROCERS, INC.,
A Kansas Corporation; and PAMELA SCOTT,
Personal Representative of the Estate of
Michael E. Scott, Deceased;**

Defendants.

ANDREI TCHIKOBAVA,

Plaintiff,

vs.

**ASSOCIATED WHOLESALE GROCERS, INC.,
A Kansas Corporation; PAMELA SCOTT,
Personal Representative of the Estate of
Michael E. Scott, Deceased; and ALBATROSS
EXPRESS, LLC;**

Defendants.

**PAMELA SCOTT, Personal Representative of
the Estate of Michael E. Scott, Deceased,**

Plaintiff,

vs.

**IGOR KOZLOV, ALBATROSS EXPRESS, LLC,
and UNICK, LLC;**

Defendants.

**MEMORANDUM
AND ORDER**

CASE NO. 4:10CV3211

LEAD CASE

CASE NO. 4: 10CV3212

MEMBER CASE

CASE NO. 8: 10CV3191

MEMBER CASE

This matter is before the Court on Objections to Magistrate's Order and Findings (Filing No. 437 in Case No. 4:10-cv-03211; Filing No. 454 in Case No. 8:10-cv-03191; Filing No. 439 in Case No. 4:10-cv-03212) submitted by Albatross Express, LLC ("Albatross"), Igor Kozlov, and UNICK, LLC, and the Amendment to Objections to

Magistrate's Order (Filing No. 468 in Case No. 4:10-cv-03211; Filing No. 484 in Case No. 8:10-cv-03191; Filing No. 469 in Case No. 4:10-cv-03212) submitted by Albatross. For the reasons stated below, the objections will be overruled.

These consolidated civil cases arise out of a motor-vehicle accident involving a tractor trailer driven by Michael E. Scott, deceased, and a tractor trailer driven by Igor Kozlov. On October 1, 2014, Magistrate Judge F.A. Gossett issued an Order (the "Order") (Filing No. 409 in Case No. 4:10-cv-03211; Filing No. 427 in Case No. 8:10-cv-03191; Filing No. 412 in Case No. 4:10-cv-03212) denying Kozlov's motion to file an amended complaint and denying Albatross's motion to amend its counterclaim.

Pursuant to 28 U.S.C. § 636 (b)(1)(A), a judge may designate a magistrate judge to hear and determine pretrial matters pending before the court. This Court may reconsider any pretrial matter "where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law." *Id.*

Judge Gossett applied the following standard in ruling on Kozlov and Albatross's motions to amend:

Under Federal Rule of Civil Procedure 15, a court should "freely give leave" to amend a pleading "when justice so requires." Fed. R. Civ. P. 15. Nevertheless, a party does not have an absolute right to amend and "denial of leave to amend may be justified by undue delay, bad faith on the part of the moving party, futility of the amendment or unfair prejudice to the opposing party." *Amrine v. Brooks*, 522 F.3d 823, 833 (8th Cir. 2008) (internal quotation and citation omitted). Moreover, "[i]f a party files for leave to amend outside of the court's scheduling order, the party must show cause to modify the schedule." *Popoalii v. Corr. Med. Servs.*, 512 F.3d 488, 497 (8th Cir. 2008) (citing Fed. R. Civ. P. 16(b)). "In demonstrating good cause, the moving party must establish that the scheduling deadlines cannot be met despite a party's diligent efforts." *Thorn v. Blue Cross & Blue Shield of Fla., Inc.*, 192 F.R.D. 308, 309 (M.D.Fla.2000) (quotation omitted).

(Order at 3.)

Applying this standard, Judge Gossett concluded that the motions to amend should be denied because Kozlov and Albatross were “not diligent in seeking to amend,” because the amendments would unfairly prejudice the opposing parties in light of the upcoming trial date of November 18, 2014, and because amendment would “unduly delay the trial of cases that are approximately four years old.” (*Id.*)

After reviewing the parties’ objections and the Magistrate Judge’s Order, the Court concludes that the parties have not demonstrated that Judge Gossett’s Order was clearly erroneous or contrary to law, and the parties’ objections will be overruled. Accordingly,

IT IS ORDERED:

1. The Objections to Magistrate’s Order and Findings (Filing No. 437 in Case No. 4:10-cv-03211; Filing No. 454 in Case No. 8:10-cv-03191; Filing No. 439 in Case No. 4:10-cv-03212) are overruled; and
2. The Amendment to Objections to Magistrate’s Order (Filing No. 468 in Case No. 4:10-cv-03211; Filing No. 484 in Case No. 8:10-cv-03191; Filing No. 469 in Case No. 4:10-cv-03212) is overruled.

Dated this 3rd day of November, 2014.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge